

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JEFFREY E. JORDAN**

Claimant

VS.

**GOODYEAR TIRE & RUBBER COMPANY**

Respondent

AND

**LIBERTY MUTUAL INSURANCE COMPANY**

Insurance Carrier

Docket No. 1,017,604

**ORDER**

Respondent appeals the September 30, 2004 preliminary hearing Order of Administrative Law Judge Brad E. Avery. Claimant was awarded benefits in the form of medical treatment after the Administrative Law Judge (ALJ) determined that claimant suffered an aggravation of his preexisting condition as a result of the accidental injury on June 16, 2004, which arose out of and in the course of his employment.

**ISSUES**

- (1) Did claimant suffer accidental injury arising out of and in the course of his employment on the date alleged? Or is this, in the alternative, a natural and probable consequence of a preexisting condition for which compensation should not be provided?
- (2) Is claimant entitled to ongoing medical treatment for this accidental injury?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge should be affirmed.

The Board will first address respondent's issue number 2, dealing with claimant's entitlement to medical treatment. K.S.A. 44-534a and K.S.A. 2003 Supp. 44-551 restrict

the issues which can be appealed from a preliminary hearing order. Those issues, as specifically set forth in K.S.A. 44-534a, include whether the employee has suffered an accidental injury; whether the injury arose out of and in the course of the employee's employment; whether notice is given or claim timely made; or whether certain defenses apply. These issues are considered jurisdictional and subject to review by the Board on appeal from a preliminary hearing. The issue of claimant's entitlement to medical treatment is not an issue over which the Board takes jurisdiction from a preliminary hearing. Additionally, K.S.A. 2003 Supp. 44-551 allows jurisdiction on an appeal from a preliminary hearing if it is alleged that an administrative law judge has exceeded his or her jurisdiction in granting or denying the benefits requested. K.S.A. 44-534a allows an administrative law judge to determine a claimant's entitlement to medical treatment. In so determining, the ALJ in this instance did not exceed his jurisdiction. Therefore, the Board does not take jurisdiction over the question of claimant's need for additional medical treatment and the appeal of that issue is dismissed.

With regard to whether claimant suffered accidental injury arising out of and in the course of employment, the Board finds that claimant has proven for preliminary hearing purposes that he suffered, at the very least, a temporary aggravation of his preexisting condition. Claimant was very forthright regarding his preexisting problems. Claimant has suffered a total of four injuries to his low back, all in the same area, with an injury occurring in March of 2001, two injuries in April of 2003 and the current claimed injury from June 16, 2004. Claimant testified that he had ongoing symptoms in his low back prior to June 16, 2004, but that the work-related bending activities occurring on that date substantially increased the pain in his low back.

Respondent argues in its brief that claimant was replacing siding on his house sometime prior to June 16, 2004, while he was on vacation, but provides no supporting evidence that this, in any way, aggravated claimant's low back condition. Additionally, the medical report of disability consultant Lynn A. Curtis, M.D., dated June 30, 2004, was placed into evidence and marked as Claimant's Exhibit 1 at the preliminary hearing. In that report, Dr. Curtis discussed claimant's long history of back problems, as well as his current symptoms. Dr. Curtis, after examining claimant, determined that claimant's current back complaints and pelvic strain were the result of his work at Goodyear on June 16, 2004. This medical opinion is uncontradicted by any other medical opinion in the record.

While it is understood that workers compensation is not intended to provide compensation for debilitating medical conditions not created or exacerbated by work-related accidents or conditions,<sup>1</sup> it is also true that work-related aggravations of preexisting conditions can be compensable.<sup>2</sup> In this instance, the Board finds that claimant

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<sup>1</sup> *Boeckmann v. Goodyear Tire & Rubber Co.*, 210 Kan. 733, 504 P.2d 625 (1972).

<sup>2</sup> *Harris v. Cessna Aircraft Co.*, 9 Kan. App. 2d 334, 678 P.2d 178 (1984).

has aggravated his preexisting back condition as a result of his employment with respondent on June 16, 2004. The Board, therefore, finds that the preliminary hearing Order of the ALJ awarding claimant benefits should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Brad E. Avery dated September 30, 2004, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 2004.

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BOARD MEMBER

c: Beth Regier Foerster, Attorney for Claimant  
John A. Bausch, Attorney for Respondent and its Insurance Carrier  
Brad E. Avery, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director